

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THEODORA MEDLEY,
Plaintiff,

v.

S. PFITZER, et al.,
Defendants.

No. 2:22-cv-00227 TLN DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1)(B).

On February 11, 2022, the court issued an order dismissing plaintiff's First Amended Complaint and supplemental pleadings with leave to file an amended complaint. (ECF No. 72.) (*Id.* at 6.) Plaintiff appealed the order dismissing the complaint which was denied on March 21, 2022. (ECF Nos. 70, 79, 81.) On May 19, 2022, the court granted plaintiff an additional sixty-day extension of time to file an amended complaint. (ECF No. 82.) After plaintiff sixty days had passed, the court issued an order to show cause directing plaintiff to file an amended complaint or show cause why this action should not be dismissed for failure to prosecute. (ECF No. 84.)

Plaintiff has now filed a response to the order to show cause. (ECF No. 86.) In this response, it appears plaintiff is attempting to raise claims. (*See Id.* at 6.) The statements made in

1 the response, such as plaintiff's stated intention to add additional defendants in amending the
2 complaint (Id. at 8) show that plaintiff is still actively attempting to prosecute this action.
3 However, even liberally construed, the response lacks complete factual allegations, statement of
4 claims, or request for relief necessary to be viewed as a complaint. Given the above, the court
5 will provide plaintiff another opportunity to file an amended complaint.

6 In order to ensure that plaintiff provides all the necessary information in an amended
7 complaint in a coherent form, plaintiff is strongly encouraged to use the form used for civil rights
8 complaints by a prisoner in this district.¹ In filing a First Amended Complaint, plaintiff should
9 ensure compliance with prior court orders regarding filing an amended complaint as well as the
10 Civil Rights Act, the Local Rules, and the Federal Rules of Civil Procedure. (See ECF No. 72.)
11 Plaintiff does not need to raise legal arguments or include legal citations in the complaint to state
12 a claim. See Fed. R. Civ. P. 8(a)(2). The complaint need only state the elements of the claims
13 plainly and succinctly, identifying the claims and alleging the facts in support of them.

14 As plaintiff appears to be actively attempting to litigate this action, defendants' motion to
15 dismiss for failure to prosecute (ECF No. 83) will be denied without prejudice to its renewal.
16 Defendants may seek to renew their motion at a later stage of these proceedings should they feel
17 that such a motion would be appropriate. It is also noted that while defendants were ordered to be
18 served prior to this case's transfer to the Eastern District, this action has not yet exited the
19 screening stage. Should plaintiff file a complaint which contains a cognizable claim(s), the court
20 will order defendants to file a responsive pleading at that time.


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23 ¹ In plaintiff's response, plaintiff argues that the court cannot "order plaintiff to 'use form 1983'
24 civil action...." (ECF No. 85.) Plaintiff's initial complaint and First Amended Complaint refer to
25 § 1983, the court has considered this action to be proceeding pursuant to § 1983. To the extent
26 plaintiff wishes to bring claims under a separate cause of action they are free to do so. If
27 plaintiff's concerns are with usage of a particular form, the court has not ordered plaintiff to use a
28 specific form, though it would within the court's purview to do so. However, it is strongly
suggested that plaintiff use the prisoner civil rights complaint form provided with this order. Any
complaint must provide specific information in an understandable format. The form provided by
the court is intended to ensure the complaint provides complete information in a clear and
understandable format.

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Defendants' Motion to Dismiss (ECF No. 83) is denied without prejudice to its renewal.
2. Plaintiff is granted sixty days from the date of service of this order to file an amended complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled "Second Amended Complaint."
3. Failure to file an amended complaint in accordance with this order may result in a recommendation that this action be dismissed.
4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form used in this district.

Dated: March 22, 2023


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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